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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92046796
Party	Plaintiff eSpeed, Inc. eSpeed, Inc. ,
Correspondence Address	GEORGES NAHITCHEVANSKY KILPATRICK STOCKTON LLP 31 W. 52ND STREET NEW YORK, NY 10019 UNITED STATES juthomas@kilpatrickstockton.com, ghn@kilpatrickstockton.com
Submission	Other Motions/Papers
Filer's Name	Georges Nahitchevansky
Filer's e-mail	juthomas@kilpatrickstockton.com, ghn@kilpatrickstockton.com, AGarcia@kilpatrickstockton.com
Signature	/s/
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

ESPEED, INC.)	
)	
Petitioner,)	
v.)	Cancellation No. 92046796
)	
ESPEEDIENT SYSTEMS, LLC,)	
)	
Registrant)	
)	

STIPULATED PROTECTIVE ORDER

This Protective Order shall govern the disclosure and production of information, documents and tangible things within the scope of discovery in connection with the above-captioned Cancellation. Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, and stipulation of parties, IT IS HEREBY ORDERED THAT:

1. As hereinafter used, the term "Confidential Information" means material or information in oral, electronic or written form or embodied in physical samples of materials, that is not known to the general public which is produced in this proceeding and which the producing party deems to incorporate trade secrets, know-how, proprietary data or commercial information and which is designated as confidential in the manner described in this order. Confidential Information includes all such designated information, whether revealed during a deposition, in a document, in any interrogatory answer, by production of tangible evidence or otherwise made available in this proceeding.

2. Confidential Information further includes, *inter alia*, information within the meaning of Fed. R. Civ. P. 26(c)(7), confidential research, development, financial, commercial, marketing or business information of a technical or non-technical nature, trade secrets, or

proprietary data relating to research, development, financial, commercial, marketing or business subject matter of a technical or non-technical nature.

3. No item shall be deemed Confidential Information if it:
 - (a) was known to the receiving party without obligation of confidentiality to the producing party prior to disclosure by the producing party, as evidenced by the receiving party's written records;
 - (b) is subsequently disclosed to the receiving party by a third party having no obligation of confidentiality to the producing party with respect to such information;
 - (c) is independently developed by employee(s) of the receiving party who had no access to such information before such development; or
 - (d) is published or becomes generally known to the public through means not constituting a breach of the Order.

Before the designation of any item as Confidential Information, the designating party shall make reasonable efforts to assure itself that these exclusions do not apply.

4. Notwithstanding any other provisions of this Order, the party producing Confidential Information may choose to withdraw its designation as Confidential Information by doing so in writing.

5. Any document or portion thereof, including any transcripts, exhibits, answers to interrogatories or copies thereof, as well as physical objects, recordings or things, which a producing party believes to contain Confidential Information shall be so designated by stamping or otherwise applying thereto the designation "(Producing Party's Name) Confidential, Subject to Protective Order" or "Confidential, Subject to Protective Order" in which case the designated

document or portion thereof and the information contained therein will be treated in accordance with the terms of this Protective Order.

6. As hereinafter used, the term "Highly Confidential Information" means "Confidential Information" as defined in this Protective Order which the producing party in good faith considers to contain or concern particularly sensitive information regarding (a) current and future marketing or production strategies, (b) technical or commercial information regarding any current product or any future product which has not yet been commercialized, or (c) sales information (other than historical summaries), costs of manufacture, costs of goods sold and profitability information for any products. The information described by this paragraph shall be designated as "Highly Confidential Information" by stamping or otherwise applying thereto the designation "{Producing Party's Name) Highly Confidential Information – Attorney Eyes Only" or "Highly Confidential Information – Attorney Eyes Only" in which case the designated document or portion thereof and the information contained therein will be treated in accordance with the terms of this Protective Order. Each party shall use its best efforts to limit the number of documents classified as "Highly Confidential Information." All documents produced with the designation "Highly Confidential Information" shall not be used for any purpose other than this cancellation, namely, *eSpeed, Inc. v. eSpeedient Systems, LLC*, Cancellation No. 92046796, or any appeals thereof.

7. All Confidential Information not reduced to documentary, tangible or physical form or which cannot be conveniently designated pursuant to Paragraph 5 or Paragraph 6 shall be designated by the producing party by informing the party requesting such confidential information in writing.

8. With respect to all Confidential Information, "Qualified Person" shall mean: (a) identified outside counsel to the parties to this proceeding; (b) two (2) designated officers or employees of the parties to this proceeding, who have read this Protective Order and agreed in writing to be bound by this Protective Order; (c) any paralegal, secretarial, stenographic, court reporting or clerical personnel employed or retained by such counsel for the purposes of this proceeding who shall have read this Protective Order; and (d) outside consultants and experts retained for the purpose of assisting in this proceeding who have read this Protective Order and agree in writing to be bound by this Protective Order. No other person shall become a Qualified Person without prior leave of the Board or written consent of the producing party.

9. With respect to any materials designated "Highly Confidential Information" pursuant to Paragraph 6, said material will only be available to (a) identified outside counsel to the parties to this proceeding; (b) any paralegal, secretarial, stenographic, court reporting or clerical personnel employed or retained by such counsel for the purposes of this proceeding who shall have read this Protective Order; and (c) outside consultants and experts retained for the purpose of assisting in this proceeding who have read this Protective Order and agree in writing to be bound by this Protective Order. No other person shall have access to materials designated "Highly Confidential Information" without prior leave of the Board or prior written consent of the producing party.

10. Confidential Information of a producing party may be shown to employees, consultants, attorneys and other agents of the producing party or of the parent company, corporate affiliates, or subsidiaries of the producing party.

11. All persons designated under Paragraphs 8(b), 8(d), or 9(c), but excluding all other persons (e.g., outside copy firms) whose sole functions are to photocopy, deliver, or

perform similar passive tasks with respect to “Confidential Information” or “Highly Confidential Information” shall sign the undertaking of Exhibit A to be bound by this Protective Order. A fully executed undertaking will be provided to the producing party at least five (5) business days prior to any initial disclosure to any person identified in Paragraph 8(b), 8(d), or 9(c). For any person identified in Paragraph 8(d) and 9(c), a curriculum vitae and a written statement setting forth such person’s present address and business address, current employer, job title, and any past or present association with any party will be provided, with the fully executed undertaking and at least five (5) business days prior to any initial disclosure. If any party objects to the disclosure of Confidential Information to such person within four (4) business days after receiving notice, no such disclosure shall be made to that person without prior approval of the Board or the objecting party. Any objection so made shall state with particularity the basis for the objection. Although the objecting party shall have the ultimate burden of showing why such person should not have access to the Confidential Information, the party seeking to disclose such Confidential Information shall have the initial burden of moving the Board for approval to disclose such Confidential Information. Pending resolution, no disclosure shall be made.

12. All Confidential Information shall be available only to Qualified Persons, shall be retained by them in strictest confidence and shall not be disclosed to any other person without the prior written consent of the producing party or the Board. All produced Confidential Information shall be carefully maintained so as to preclude access by the officers, employees and agents of any party who are not Qualified Persons, and shall not be used for any purpose other than this cancellation, namely, *eSpeed, Inc. v. eSpeedient Systems, LLC*, Cancellation No. 92046796, or any appeals thereof.

13. In the event that a receiving party receives a subpoena requesting or is ordered by another court or governmental entity to produce the Confidential Information of another party, the receiving party shall notify the producing party immediately of that subpoena or order and shall promptly provide said subpoena or order, if it is in writing, to the producing party so that the producing party may object to the subpoena or order. If the producing party chooses to object to the subpoena or order, it shall provide a copy of said objection to the receiving party. If the receiving party receives nothing from the producing party prior to the time for its compliance with the order or subpoena, the receiving party may comply with its obligations under the subpoena or order.

14. In the event that a deposition in this action is, at the request of a party, attended by a person not authorized to receive Confidential Information, then any other party may have such person excluded from the deposition during any portion(s) of the examination that it reasonably believes may result in the disclosure of its Confidential Information.

15. All information subject to confidential treatment in accordance with the terms of this Protective Order that is filed with the Board, and any pleadings, motions or other papers filed with the Board disclosing any Confidential Information, shall be filed under seal and kept under seal until further order of the Board. Where possible, only confidential portions of filings with the Board shall be filed under seal.

16. Any Confidential Information filed with the Board shall be clearly marked, as in Paragraphs 5 and 6, and all pleadings, motions or other papers shall state in bold letters on the first page of the document that it contains material and information that is "Confidential, Subject to Protective Order" or "Highly Confidential Information – Attorney Eyes Only". Such

information shall be filed under seal with the envelope(s) or other suitable container(s) stamped or marked as follows:

CONFIDENTIAL

This (envelope/container) contains documents or information that are subject to a protective order or agreement. The confidentiality of the material is to be maintained and the (envelope/container) is not to be opened, or the contents revealed to any individual, except by order of the Board.

17. A person not otherwise a Qualified Person under Paragraph 8 may be interviewed, may be examined as a witness at deposition or at trial and may testify concerning Confidential Information as follows:

- (a) an employee or a former employee of a party or of the party's parent company, corporate affiliates, or subsidiaries may be examined and may testify concerning any Confidential Information produced by that party which was prepared or otherwise generated while that former employee was so employed;
- (b) a present or former consultant to a party may be examined and may testify concerning any Confidential Information produced by that party which was lawfully communicated to such consultant; and
- (c) a non-party, who has had any contact or relationship with either party may be interviewed and examined and may testify:
 - (1) concerning any Confidential Information which was lawfully communicated between the non-party and the producing party; and
 - (2) concerning any Confidential Information of either party which documentary or testimonial evidence establishes was lawfully communicated between the non-party and the producing party.

18. Nothing herein shall prevent disclosure of any Confidential Information by the party producing such Confidential Information to (a) any employee or officer of the producing party or (b) any person no longer affiliated with the producing party, who either authored, in whole or in part, or received the Confidential Information prior to the initiation of this Cancellation.

19. The original and all copies of any deposition transcript shall be considered to contain wholly Confidential Information and shall be fully subject to the relevant provisions of this Protective Order for a period of fifteen (15) days after the deposition transcript becomes available. After the expiration of such fifteen (15) day period, the deposition transcript shall not be treated as Confidential Information unless the witness or the party producing the witness designates in writing those portions of the deposition transcript containing Confidential Information.

20. Nothing in this Protective Order constitutes a finding or admission that any of the information disclosed or contained in the designated documents and things is or is not confidential, and nothing herein shall prevent any party from contending, during the progress of this proceeding, that any or all of such information is not confidential. Any party may request from the party asserting confidentiality:

- (a) a change in the designation of any document, thing and/or information as Confidential Information, and/or
- (b) permission to disclose such documents, things and/or information to persons in addition to those specified herein as Qualified Persons.

Such request shall be in writing, stating the grounds therefor, and served on all counsel including counsel for the party who designated the subject matter as Confidential Information. The

requested change shall occur and/or the requested permission shall be granted, unless within five (5) business days after service of such notice an objection for good cause is served on the requesting party. In the event such objection is timely served, neither the requested change shall occur nor the requested permission shall be granted, until the objection is resolved by written agreement of the parties or is ruled upon by the Board.

21. In any disagreement over the designation of Confidential Information, the producing party bears the ultimate burden of showing that the designated information is Confidential Information. No party to this action shall be obligated to challenge the propriety of any designation, and a failure to do so shall not act as a waiver of its right to make a subsequent attack on the propriety of such designation, nor shall such failure to challenge constitute an admission that any information is, in fact, confidential.

22. The inadvertent disclosure by the producing party of Confidential Information without designating that information as such will not be deemed a waiver in whole or in part of confidentiality either as to the specific information disclosed or as to any other information relating thereto or on the same or related subject matter. Upon prompt notice by the producing party showing that the information was inadvertently disclosed and designating the information confidential, the receiving party shall return the originals and all copies of the documents or things containing the Confidential Information so that the producing party may designate them as containing such information.

23. This Protective Order shall be without prejudice to the right of any party to oppose production of any information on any ground permitted by the Federal Rules of Civil Procedure or the Trademark Rules of Practice other than the purported confidential nature of the requested information.

24. On final determination of this proceeding, each party and other person subject to the terms hereof shall assemble and destroy, or return to the producing party, within thirty (30) days following the conclusion of these proceedings, all materials, documents and things constituting Confidential Information, all copies, summaries and abstracts thereof and all other materials, memoranda or documents constituting or containing Confidential Information, except that outside counsel for each party may retain one set of pleadings and other cancellation papers, including transcripts of testimony and exhibits filed with the Board, deposition transcripts and deposition exhibits. If destroyed, such party shall certify to the producing party the destruction of all such materials. Notwithstanding anything to the contrary contained herein, attorney's work product shall not be subject to the provisions of Paragraph 24.

25. Any party for good cause may apply to the Board for a modification of this Protective Order.


26. This Protective Order shall be binding on the parties upon execution by their counsel notwithstanding that it may not have been entered as an Order of the Board at the time of execution.

27. IT IS FURTHER ORDERED that documents, things, or deposition testimony requested or obtained through subpoenas served in connection with this proceeding may be designated by the subpoenaed party as Confidential Information within the meaning of this Protective Order and, if so, the Confidential Information so subpoenaed and designated shall be governed by the terms of this Protective Order.

28. By the signatures of their respective counsel affixed below, each of the parties warrants that it knowingly and willingly enters into this Stipulation and Order.

ESPEED, INC.


By: _____


Georges Nahitchevansky
KILPATRICK STOCKTON LLP
31 W. 52nd Street, 14th Floor
New York, NY 10019

Counsel for Petitioner

ESPEEDIENT SYSTEMS, LLC

By: _____


Richard W. Young
Melissa S. Dillenbeck
David J. Moorhead
DRINKER BIDDLE & REATH, LLP
191 N. Wacker Drive, Suite 3700
Chicago, IL 60606

Counsel for Registrant

SO ENTERED:

Dated: _____

TRADEMARK TRIAL AND APPEAL BOARD

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

UNDERTAKING OF _____

I, _____, being first duly sworn on oath, depose and say:

3. I expressly agree that:

- (a) I have read and shall be fully bound by the terms of the STIPULATED PROTECTIVE ORDER;
- (b) All documents, things and information which are disclosed to me pursuant to the STIPULATED PROTECTIVE ORDER shall be maintained in strict confidence, and I shall not disclose or use the original or any copy of, or the subject matter of any of the documents, things or the information they contain, except in accordance with the terms of the STIPULATED PROTECTIVE ORDER;
- (c) I shall not use or refer to any of the documents, things and/or any information that falls within the terms of the STIPULATED PROTECTIVE ORDER other than in connection with this litigation and as prescribed in the STIPULATED PROTECTIVE ORDER;
- (d) I shall, upon notification that this litigation has terminated, return any and all originals and/or copies of the documents and things to counsel for the disclosing party at such counsel's expense, and I shall destroy any notes or memoranda I have which in any way concern the substance embraced by such documents, things and/or information.

4. I do and shall subject myself to the continuing jurisdiction of the above-entitled Court over my person, wherever I shall be found, for purposes of enforcement of the STIPULATED PROTECTIVE ORDER.

[signature]

Subscribed and Sworn to before me this

_____ day of _____, 2007.

Notary Public